

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DATREC, LLC,)	
Plaintiff,)	
v.)	Civil Action No. 6:20-cv-1106
)	
ATHENA HEALTH, INC.)	JURY TRIAL DEMANDED
Defendant.)	

PLAINTIFF'S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

DatRec, LLC (“DatRec”) files this Original Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 8,156,158 (“the ‘158 patent”) (referred to as the “Patent-in-Suit”) by Athena Health, Inc.

I. THE PARTIES

1. Plaintiff DatRec is a Texas Limited Liability Company with its principal place of business located in Harris County, Texas.
2. On information and belief, Athena Health, Inc. (“Athena”) is a corporation existing under the laws of the State of Texas, with a principal place of business located at 800 W Cesar Chavez St, Austin, TX 78701. On information and belief, Athena sells and offers to sell products and services throughout Texas, including in this judicial district, and introduces products and services that perform infringing methods or processes into the stream of commerce knowing that they would be sold in Texas and this judicial district. Defendant may be served with process by their registered agent, Cogency Global Inc., 1601 Elm St., Suite 4360, Dallas, TX 75201.

II. JURISDICTION AND VENUE

3. This Court has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271.

4. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of Texas and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in this judicial district.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Texas and this District.

III. INFRINGEMENT

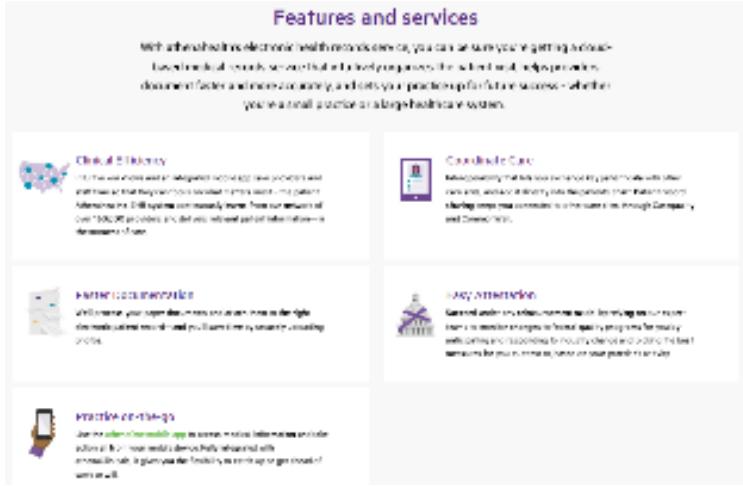
A. Infringement of the '158 Patent

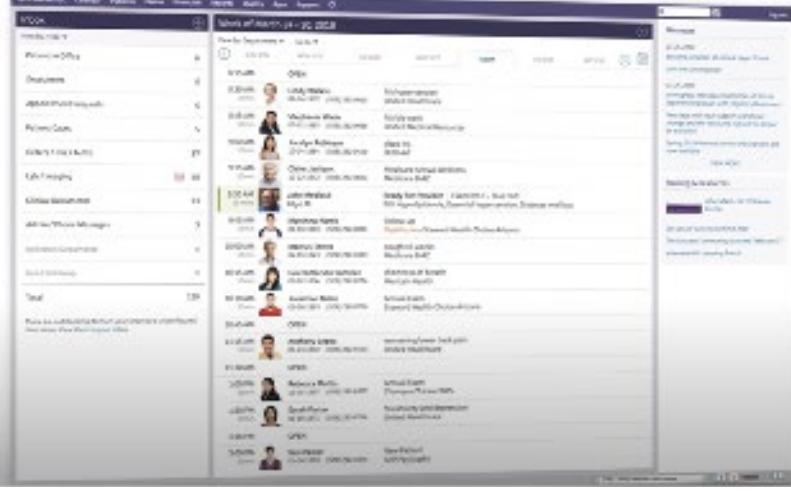
6. On April 10, 2012, U.S. Patent No. 8,156,158 ("the '158 patent", attached as Exhibit A) entitled "Method and System for Use of a Database of Personal Data Records" was duly and legally issued by the U.S. Patent and Trademark Office. DatRec, LLC owns the '158 patent by assignment.

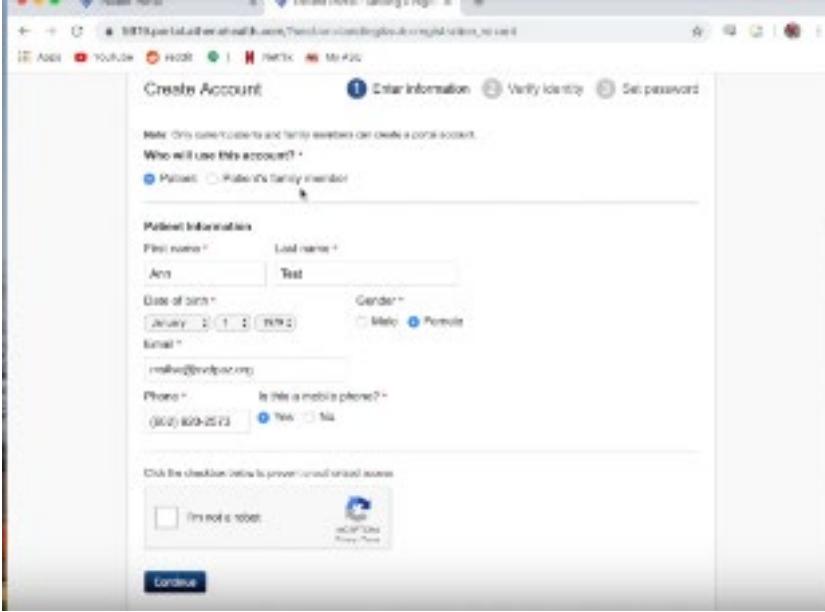
7. The '158 patent relates to a novel and improved manner of constructing a verified database of identified individuals capable of processing with a subgroup of at least one medical application.

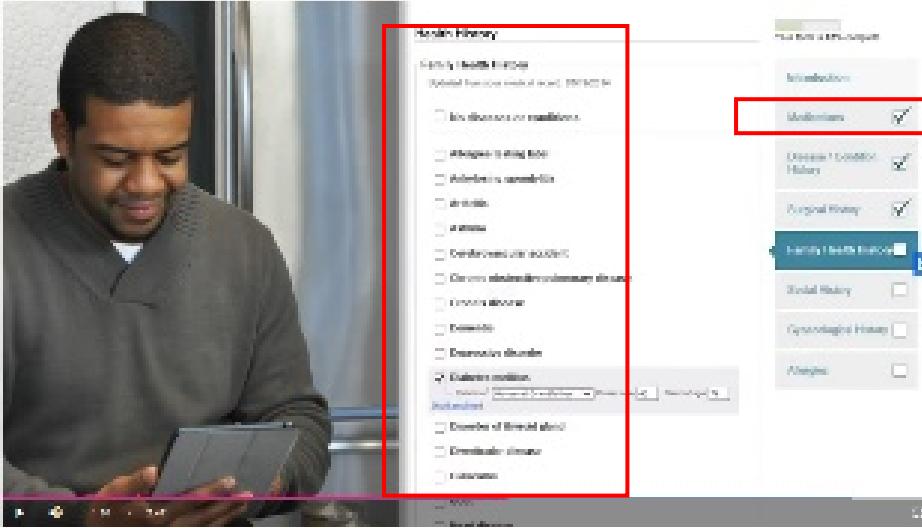
8. Athena maintains, operates, and administers electronic health records that infringes one or more claims of the '158 patent, including one or more of claims 1-23, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the '158 Patent into service (i.e., used them); but for Defendant's actions, the claimed-inventions embodiments involving Defendant's products and services would never have been put into service. Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant's procurement of monetary and commercial benefit from it.

9. Support for the allegations of infringement may be found in the following preliminary table:

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
A method for using and managing a database, the method comprising:	<p>Plaintiff contends that Athenahealth EHR provides a system and/or method for using and managing a database:</p>  <p>Features and services</p> <p>With Athenahealth's electronic health records service, you can ensure you're getting a complete medical record, services that help you manage the patient and help providers document faster and more accurately, and set your practice up for future success - whether you're a small practice or large healthcare system.</p> <p>Clinical Efficiency</p> <p>With the latest and most advanced technology, new patients and their health information can be easily viewed in one place - no patient. Athenahealth EHR system can easily store, track and review over 1,000,000 procedures and clinical patient information in a single database of time.</p> <p>Care Coordination</p> <p>Interoperability that allows exchange of patient information with other healthcare providers and delivery of information from other systems sharing timely and accurate information with care teams through Connected Health.</p> <p>Partner Collaboration</p> <p>With secure, real-time access to your physician's electronic medical records, you can easily communicate and collaborate on patient care.</p> <p>Easy Navigation</p> <p>Learn about our extensive navigation tools, including our mobile app, to make navigating to Athenahealth's quality programs for many health centers and hospitals to include clinical and business intelligence services for you to better serve your patients and services.</p> <p>Mobile on-the-go</p> <p>Use the Athenahealth app to access medical information on the go! No longer will a device be tethered with a power cable, it gives you the flexibility to travel or get around where ever you go.</p> <p>Attachment 1 (Features And Services (Webpage, 2020)) at 1.</p>

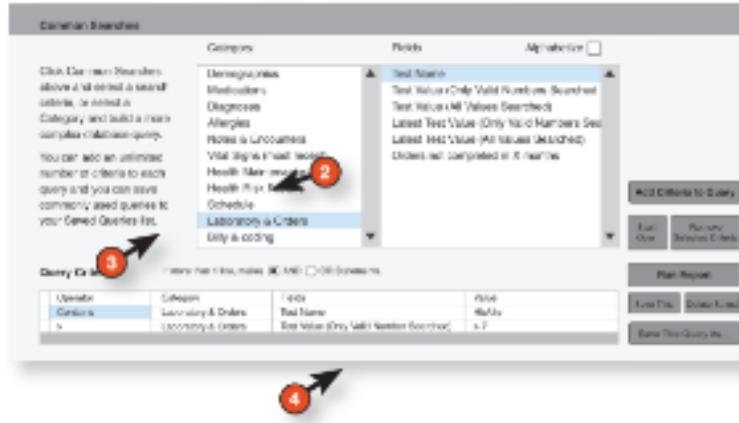
Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	 <p>[Source: https://www.youtube.com/watch?v=sV_XqqofmLc&list=PLh8xCXrFOv_gJeoZIWzlqtyvD2IP4vF9u&index=4 (at 0:06)]</p>
<p>providing a verified database of a plurality of identified individuals, the verified database comprising a plurality of individual-identifier data sets (IDSs) and relationship data; and</p>	<p>Plaintiff contends that a verified database of a plurality of identified individuals is provided which comprises a plurality of individual-identifier data sets (IDSs) and relationship data.</p> <p>The following exemplifies this limitation's existence in Accused Systems:</p> <p style="background-color: #f0f0f0; padding: 10px;"> With athenahealth's electronic health records service, you can be sure you're getting a cloud-based medical records service that intuitively organizes the patient visit, helps providers <u>document faster and more accurately, and sets your practice up for future success - whether you're a small practice or a large healthcare system.</u> </p> <p>Attachment 1 (Features And Services (Webpage, 2020)) at 1.</p>

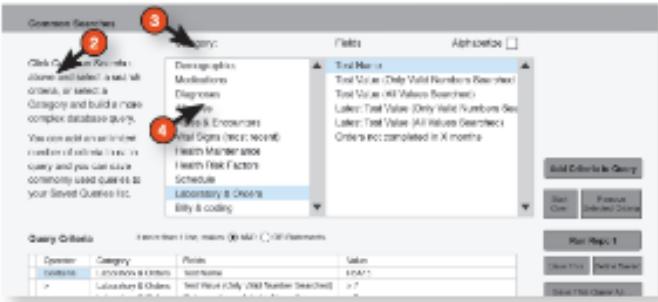
Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p><u>athenahealth's database, the digital byproduct of providing electronic health records, billing, and a variety of other services for healthcare providers on a single, shared network – gives us an unprecedented, near real-time view of the activities of health systems and medical groups nationwide.</u></p> <p>Attachment 2 (What Makes A Physician Network High-Performing? (2017)) at 1 of 5.</p> <div style="border: 2px solid red; padding: 5px; margin-bottom: 5px;"> <p>170.314(a)(13): Family health history</p> </div> <p>Types of Costs: None</p> <p>Limitations: athenaClinicals does not support free-text family relations, but does support the following SNOMED-CT-based family relations: Brother, Daughter, Father, Maternal Aunt, Maternal Grandmother, Maternal Grandfather, Maternal Uncle, Mother, Paternal Aunt, Paternal Grandmother, Paternal Grandfather, Paternal Uncle, Sister, Son, and Unspecified Relation. athenaClinicals also utilizes SNOMED-CT for family health history.</p> <p>Attachment 3 (AthenaClinicals (Inpatient) 2014 Edition Certified Health IT Costs And Limitations (2014)) at 6 of 12.</p> 

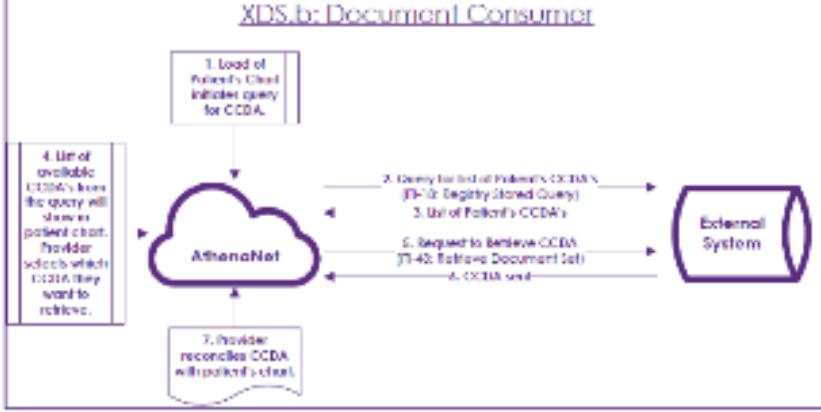
Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p>[Source: https://www.youtube.com/watch?v=WbpZHqP_fGs (at 0:25)]</p>  <p>[Source: https://www.athenahealth.com/videos/patient-portal-welcome (Click on the Video)]</p>
processing said verified database in accordance with one or more parameters or conditions selected in accordance with at least one medical application and creating a sub-group database including data records of the individuals from the verified database having said one or more	Plaintiff contends that the verified database is processed in accordance with one or more parameters or conditions selected in accordance with at least one medical application and a sub-group database is created (for example, filtering, sorting, etc.) including data records of the individuals from the verified database having said one or more selected parameters or conditions, thereby allowing collection of data comprising one or more selected parameters or conditions and delivery of at least part of the collected data to one or more users. Further, data from the verified database is applied to provide personalized medicine service to at least one of the identified individuals. The following exemplifies this limitation's existence in Accused Systems:

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
<p>selected parameters or conditions, thereby allowing collection of data comprising one or more selected parameters or conditions and delivery of at least part of the collected data to one or more users and enable to apply data from said verified database to provide personalized medicine service to at least one of said identified individuals;</p>	<h2>EHR Patient Reports</h2> <p>Developing Clinical Reports in AthenaClinicals EHR helps to facilitate and support a continuous quality improvement mindset.</p> <p>These reports enable the practice to analyze clinical data about their patients based on specific information, such as:</p> <ul style="list-style-type: none"> ▪ Diagnosis ▪ Lab results ▪ Medications ▪ ADA standards of care <p>Reviewing patient reports can support your practice's QDM efforts by:</p> <ul style="list-style-type: none"> ▪ Identifying patients not at goal ▪ Reminding patients overdue for an office visit ▪ Monitoring ADA standards of care <p>...</p> <h2>EHR Patient Reports</h2> <p>Clinical Reports in AthenaClinicals EHR can be used to identify appropriate candidates not at treatment goal and gaps in care.</p> <p>The following demonstrates how to run clinical reports based upon criteria in AthenaClinicals EHR.</p> <p>Attachment 4 (EHR Patient Reports (2016)) at 1 and 2 of 6.</p>

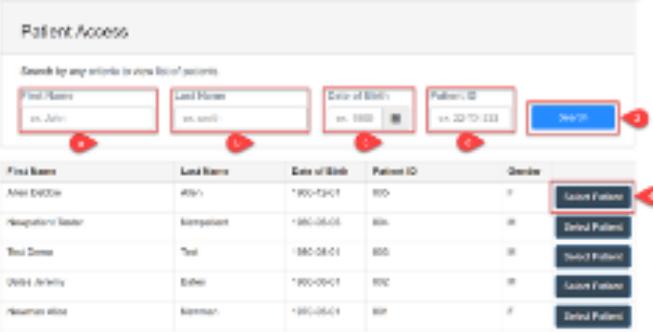
Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p>Query Example #1 Identify patients not at HbA1c goal</p> <p>From the Choose Display Columns tab, select desired columns from the Available Display Columns list (i.e., Patient Last name, Patient First name, etc.).</p> <p>From the Choose & Set Filters tab, locate Lab Order Type from the Available Filters list.</p> <p>...</p> <p>In the Order Genus field, select Hemoglobin A1c</p> <p>Select Value in the Results option, set the operator to > (greater than), and enter 7 in the value text box.</p> <p>Click Run Report.</p> <p>Attachment 4 (EHR Patient Reports (2016)) at 3 and 4 of 6.</p>

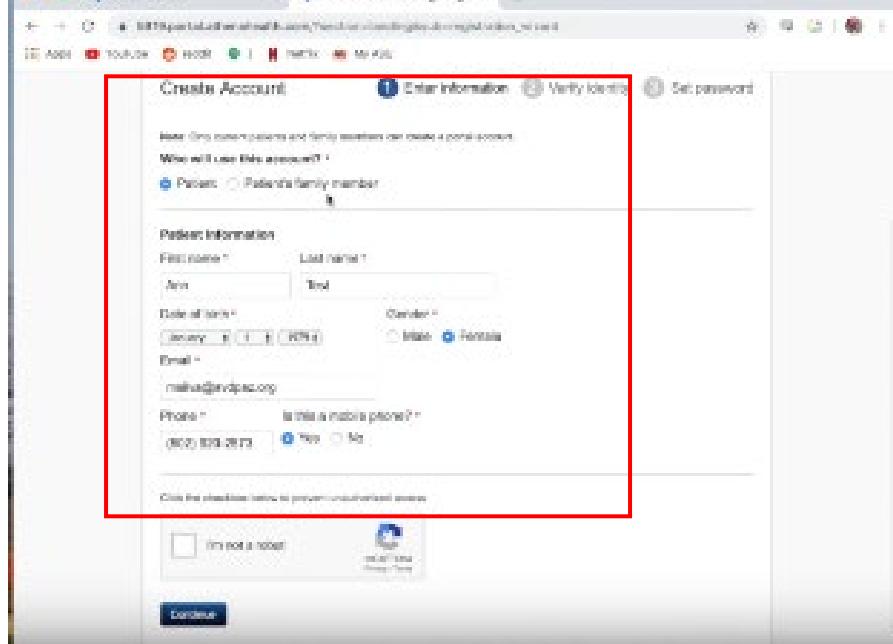
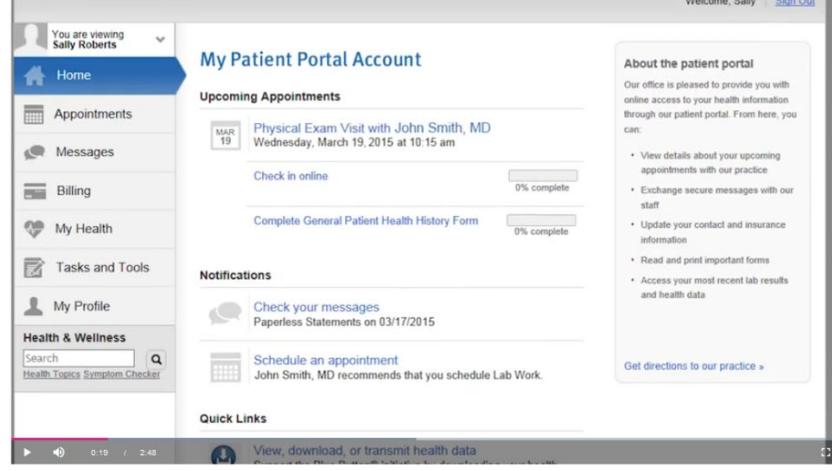
Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p>Criteria Example #2: Identify patients who have uncontrolled diabetes and have not had an HbA1c test in greater than 3 months</p> <ol style="list-style-type: none"> ① As in example 1, from the Choose Display Columns tab, scroll and select desired columns from the Available Display Columns. From the Choose & Set Filters tab, locate and add Lab Order Type to Filter Criteria, and set: Order Generic to Hemoglobin A1c ② Set the Results Status to Incomplete. ③ Select Date radio button Relative Date Range. ④ From the Relative Date Range dropdown, choose Custom, and set the dates for at least a 3 month range prior to today. ⑤ Run the report.  <p>Attachment 4 (EHR Patient Reports (2016)) at 5 of 6.</p>

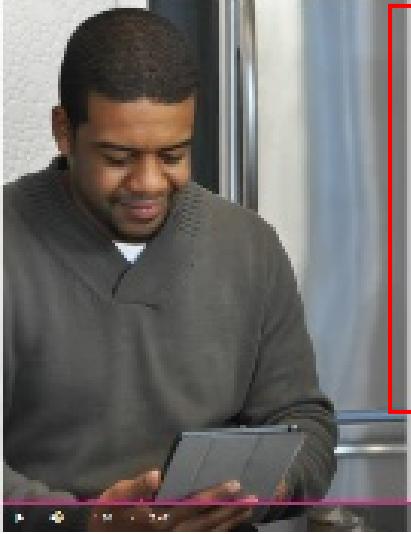
Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p>Unread Example: 4.12 Identify diabetic patients who have not had a foot exam</p> <p>① From the main menu, select Reports, Quality Management ② Navigate to the Program/Measure listing. ③ Enter diabetes in the filter by text box. (Results should be similar to the example below.) ④ Select Quality Measure CQM123 Diabetes Foot Exam. ⑤ Run the report.</p>  <p>Patient Identity Query (optional)</p>  <p>PDQ: Patient Demographic Query</p>  <p>Attachment 4 (EHR Patient Reports (2016)) at 6 of 6.</p> <p>Attachment 5 (Continuity Of Care Document Exchange (2019)) at 7.</p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p style="text-align: center;"><u>XDS.b: Document Consumer</u></p>  <pre> graph TD subgraph XDS [XDS.b: Document Consumer] direction TB A[1. Load of Patient's Chart Initiates query for CCDA] --> C[AthenaNet] C --> B[2. Query for list of Patient's CCDA's JDI-ic: Registry Stored Query] B --> D[3. Uri of Patient's CCDA's] D --> E[4. Uri of available CCDA's from the query will show in patient chart. Provider selects which CCDA they want to retrieve.] E --> F[5. Request to Retrieve CCDA JDI-40: Retrieve Document Set] F --> G[6. CCDA sent] G --> H[7. Provider reconciles CCDA with patient's chart] H --> C end </pre> <p>The diagram illustrates the XDS.b: Document Consumer process. It shows a flow from a provider initiating a query for a patient's CCDA, through AthenaNet retrieving the list of CCDA's, to the provider selecting one and requesting its retrieval, finally reconciling it with the patient's chart.</p> <p>Attachment 5 (Continuity Of Care Document Exchange (2019)) at 8.</p> <p>Coordinate Care  Interoperability that lets you exchange key patient data with other care sites, and add it directly into the patient's chart. Patient record sharing keeps you connected to other care sites through Carequality and CommonWell.</p> <p>Attachment 1 (Features And Services (Webpage, 2020)) at 1.</p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p>ActX Brings Genomic Decision Support to athenaClinicals</p> <p>ActX's close integration with athenaClinicals makes it simple to practice Precision Medicine. Our Genomic Decision Support™ gives physicians actionable insights from a patient's genetic data – all within the athenaClinicals workflow. The ActX Service is designed for the busy clinician, who does not have to be an expert in medical genetics.</p> <p>Check drug-genome interactions as prescriptions are written</p> <p>89% of patients carry one or more variants that affect medications. Every time a physician writes a prescription in athenaClinicals, ActX checks the medication against the patient's genetics for issues with adverse effects, efficacy, and dosing. If there are any interactions found, ActX notifies the physician. Our growing Knowledgebase covers most U.S. prescription drugs with sufficient evidence of a genomic impact.</p> <p>Identify actionable hereditary risks</p> <p>ActX alerts the physician in their normal clinical inbox if actionable medical risks are found based on the patient's genetics. For the 3-4% of patients with serious actionable genetic risks, we provide a summary of evidence-based published recommendations with supporting references. The patient's genetic risks is frequently re-analyzed based on the latest knowledge and you will be notified if the analysis changes.</p> <p>Easily access your patient's Genomic Profile within athenaClinicals</p> <p>The patient's Genomic Profile is part of the athenaClinicals patient chart – you can view the latest genomic information on the patient at any time. The Genomic Profile includes information about all potential drug genome interactions, actionable hereditary risks, and carrier status for the patient. It is frequently updated to reflect the latest analysis of the patient's genetics.</p> <p>Choose the best service option for your patients</p> <p>Physicians have the ability to select the test that's best for their patient: Choose from our ActX Full Service test – including pharmacogenomics, hereditary risks and carrier status – or our ActX Pharmacogenomics Service, which includes pharmacogenomics only.</p> <p>Attachment 6 (Actx Brings Genomic Decision Support To AthenaClinicals (Webpage, 2020)) at 1.</p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	<p>5. The Patient Access screen for the selected provider is displayed.</p>  <p>6. Enter one or more of the available search parameters:</p> <ol style="list-style-type: none"> First Name: Searches for patients by the entered first name. Last Name: Searches for patients by the entered last name. Date of Birth: Searches for patients by the entered or selected birth date. Patient ID: Searches for patients by the entered patient ID. <p>7. Select the Search button to display a list of all patients matching the entered search parameters. <i>Note: You may simply select the Search button to display a list of all patients.</i></p> <p>[Source: https://mydata.athenahealth.com/access-centricity-apis]</p>
wherein said providing of the verified database comprises: permitting a plurality of individuals to enter individual-associated data bits (IDBS) into a computerized system, each of the IDBs comprising at least one personal identifier relating to the individual and relationship data comprising data on one or more related individuals	Plaintiff contends that a verified database of a plurality of identified individuals is provided which comprises a plurality of individual-identifier data sets (IDSs) and relationship data. A plurality of individuals is permitted to enter individual-associated data bits (IDBS) into a computerized system, each of the IDBs comprising at least one personal identifier relating to the individual and relationship data comprising data on one or more related individuals and the nature of relationship. The entered IDBs are processed to generate the IDS, one for each identified individual, being either said individual who has entered the individual-associated data bits or one of the related individuals and construct the verified database comprising IDSs of identified individuals. The following exemplifies this limitation's existence in Accused Systems:

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
<p>and the nature of relationship;</p> <p>processing the entered IDBs to generate the IDS, one for each identified individual, being either said individual who has entered the individual-associated data bits or one of the related individuals and construct the verified database comprising IDSSs of identified individuals.</p>	
	<p>[Source: https://www.youtube.com/watch?v=WbpZHqP_fGs (at 0:25)]</p>  <p>[Source: https://www.athenahealth.com/videos/patient-portal-welcome (Click on the Video)]</p>

Exemplary Claim	Athenahealth EHR (or athenaClinicals®)
	 <p>The image shows a man in a grey zip-up hoodie looking down at a tablet device. On the screen of the tablet is a screenshot of the Athenahealth EHR software. A red box highlights the 'Health History' section, which includes a list of medical conditions like 'Diabetes mellitus', 'Hypertension', and 'Osteoporosis'. Another red box highlights the 'Medications' section, which is checked. To the right of the health history section, there are other tabs for 'Allergies', 'Diseases / Condition History', 'Surgical History', 'Family Health History' (which is selected), 'Social History', 'Gynecological History', and 'Abnormal'.</p> <p>[Source: https://www.athenahealth.com/videos/patient-portal-welcome (Click on the Video)]</p> <p>170.314(a)(13): Family health history</p> <p>Types of Costs: None</p> <p>Limitations: athenaClinicals does not support free-text family relations, but does support the following SNOMED-CT-linked family relations: Brother, Daughter, Father, Maternal Aunt, Maternal Grandmother, Maternal Grandfather, Maternal Uncle, Mother, Paternal Aunt, Paternal Grandmother, Paternal Grandfather, Paternal Uncle, Sister, Son, and Unspecified Relation. athenaClinicals also utilizes SNOMED-CT for family health history.</p> <p>Attachment 3 (AthenaClinicals (Inpatient) 2014 Edition Certified Health IT Costs And Limitations (2014)) at 6 of 12.</p> <p>athenahealth's database, the digital byproduct of providing electronic health records, billing, and a variety of other services for healthcare providers on a single, shared network – gives us an unprecedented, near real-time view of the activities of health systems and medical groups nationwide.</p> <p>Attachment 2 (What Makes A Physician Network High-Performing? (2017)) at 1 of 5.</p>

These allegations of infringement are preliminary and are therefore subject to change.

10. Athena has and continues to induce infringement. Athena has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., question and answer services on the Internet] and related services that provide question and answer services across the Internet such as to cause infringement of one or more of claims 1–23 of the '158 patent, literally or under the doctrine of equivalents. Moreover, Athena has known of the '158 patent and the technology underlying it from at least the date of issuance of the patent.

11. Athena has and continues to contributorily infringe. Athena has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., question and answer services on the Internet] and related services that provide question and answer services across the Internet such as to cause infringement of one or more of claims 1–23 of the '158 patent, literally or under the doctrine of equivalents. Moreover, Athena has known of the '158 patent and the technology underlying it from at least the date of issuance of the patent.

12. Athena has caused and will continue to cause DatRec damage by direct and indirect infringement of (including inducing infringement of) the claims of the '158 patent.

IV. JURY DEMAND

DatRec hereby requests a trial by jury on issues so triable by right.

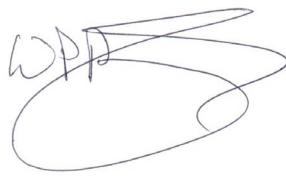
V. PRAYER FOR RELIEF

WHEREFORE, DatRec prays for relief as follows:

- a. enter judgment that Defendant has infringed the claims of the ‘158 patent through Athena.com, or a website linked thereto;
- b. award DatRec damages in an amount sufficient to compensate it for Defendant’s infringement of the ‘158 patent in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- c. award DatRec an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- d. declare this case to be “exceptional” under 35 U.S.C. § 285 and award DatRec its attorneys’ fees, expenses, and costs incurred in this action;
- e. declare Defendant’s infringement to be willful and treble the damages, including attorneys’ fees, expenses, and costs incurred in this action and an increase in the damage award pursuant to 35 U.S.C. § 284;
- f. a decree addressing future infringement that either (i) awards a permanent injunction enjoining Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an amount consistent with the fact that for future infringement the Defendant will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law; and
- g. award DatRec such other and further relief as this Court deems just and proper.

Respectfully submitted,

Ramey & Schwaller, LLP



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